

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1921 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA.

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

PARMAR JADAVJI DHANJI

Versus

CHIEF SECRETARY

Appearance:

J.D.Parmar, PARTY-IN-PERSON - Petitioner
Mr. K.M. Mehta, A.G.P. for respondent No.1
Respondent No. 2 served.
G.N.Shah for respondent No.3

CORAM : MR.JUSTICE R.BALIA.

Date of decision: 08/08/96

ORAL JUDGEMENT

1. The case has a chequered history and the petitioner has knocked the doors of justice for the third time before this Court, in the circumstances that are noticed hereinafter.

2. As an unemployed citizen of India holding a diploma in Mechanical and Electrical Engineering and also a diploma in Television Engineering, the petitioner applied for retail dealership in petroleum products to the Indian Oil Corporation in pursuance of its advertisement dated 24.8.1976. The respondent No.3 Corporation on 15.11.1976 selected the petitioner for putting up a retail outlet at the location advertised at B-Site, Kotharia, on National Highway 8B and letter of offer was issued to the petitioner. Before the dealership could commence in pursuance of letter of offer petitioner was required to obtain No Objection Certificate from the District Magistrate of the district concerned as well as secure land for establishing the petrol pump under the said letter of offer.

3. The fact about No Objection Certificate is that it is required to be issued by the District Magistrate under the relevant provisions of the Explosives Act. The petitioner had applied for it. The Corporation was insisting on production of the No Objection Certificate. At one point of time on 17th July 1979, the offer was revoked by the Corporation for want of production of No Objection Certificate which was revived, but, ultimately, again it was withdrawn in 1980. The District Magistrate in the first instance did not entertain the application for No Objection Certificate made by the petitioner on the ground that it was already granted in favour of the Corporation on 11.1.1980 in respect of the said dealership. The petitioner preferred an appeal before the Government which set aside the order and the proceedings were remanded back to the District Magistrate who on 5.1.1981 granted the same again in the name of respondent No.3 Corporation. The petitioner again had to prefer an appeal before the State Government which appeal came to be rejected on the ground that there was no subsisting offer of respondent No.3 Corporation in favour of the petitioner and therefore there was no need of granting No Objection Certificate to the petitioner. This rejection of No Objection certificate in favour of the petitioner became the subject matter of issue in Special Civil Application No.622 of 1983 filed by the petitioner.

4. Another ancillary issue concerning the availing of the letter of offer issued to the petitioner for

dealership of petroleum products was availability of the land. The land was granted to the petitioner initially on 22.7.1978 on lease for a period of seven years. The said period was later on raised to 15 years. The grant of land in favour of the petitioner was subject to the condition that the petitioner obtains a No Objection Certificate from the District Magistrate under the Explosives Act. On rejection of application of the petitioner for grant of No Objection Certificate, by District Magistrate and withdrawal of offer by the Corporation, the Collector cancelled the grant of land in favour of the petitioner, because according to him, it was not needed for the purpose it was granted to the petitioner for the reason that that purpose has ceased to exist. This cancellation of the lease granted in favour of the petitioner was at the instance of the corporation. This issue was also subject matter of Special Civil Application No.622 of 1983. The facts stated above are as per the facts noticed by this court in its decision dated 22.12.1983 deciding the Special Civil Application No.622 of 1983 between these very parties and there is no dispute nor there can be, as regards these facts are concerned.

5. The petitioner's claim for getting relief against denial of reaping the fruit of letter of offer issued to him by the Corporation as an educated unemployed citizen was first to be met with preliminary objection as to delay and laches in approaching this court. The court found that delay in approaching the court was beyond the control of the petitioner and noticing the conduct of the corporation indicated that in the circumstances corporation ought not to have raised the plea of delay and laches. The court also found that for the situation in which the petitioner has been placed in spite of having been selected for the dealership responsibility clearly lie with the State authorities and respondent No.3 Corporation. It recorded its finding as under:

"Taking the advantage of this complicated situation for which the State authorities and the respondent No.3 are responsible, the State has now cancelled the grant also on the ground that he has not obtained No Objection Certificate as per condition No.1 of the grant of land. It is surprising that the respondent No.3 itself appeared before the Collector and persuaded him to cancel the grant of land so that the very bottom of the petitioner's case is knocked out and the respondent No.3 - Corporation is left free in dealing with this affair."

6. With this finding, the court allowed the petition with the following directions:

"In above view of the matter, I allow this petition by directing the District Magistrate, Rajkot to deal with the case of the petitioner for No Objection Certificate under the Explosives Act and also by quashing the order cancelling the grant of land to the petitioner. I also direct the respondent No.3 - Corporation to deal with the case of the petitioner's dealership within one month from today without being in any way inhibited by their new policy decision and also keeping in mind that there was no reason for them not to extend the period of earlier agreement because of the requirement of law, namely, the No Objection Certificate to be obtained by the petitioner. Rule is accordingly made absolute with no order as to costs."

7. The Corporation took up the matter in appeal by way of Letters Patent Appeal before the Division Bench which came to be decided on 6th December 1990 after taking into account the statement made by the learned counsel for the Corporation that the Corporation (appellant) shall deal with the claim of the dealership of respondent No.1 within three months without being in any way inhibited by the new policy decision during which it will afford the petitioner an opportunity to represent his case before the Corporation which will make appropriate decision on merit within three months. The court disposed of the Letters Patent Appeal with the following directions:

"The appellant will deal with the claim of respondent No.1 for dealership within three months without being in any way inhibited by the new policy decision and the respondent No.1 will give an opportunity to represent his case before the appellant who will take appropriate decision on merits on or before 7.3.1991."

8. These facts do lead to irresistible conclusion that as per the finding in the Special Civil Application No.622 of 1983, State authorities as well as corporation are responsible for creating a situation where, firstly petitioner could not get requisite NOC and land documents in time because of the conduct of these parties to commence with the dealership and later on his appeal for grant of NOC and allotment of land was cancelled because

of the withdrawal of the offer by the Corporation. The direction to the District Magistrate for issue of NOC and quashing the order of cancellation of lease granted in favour of petitioner stood unimpaired and operative as a conclusive finding between the parties that the petitioner held required location for the purpose of starting dealership as per the grant made by the Collector in favour of the petitioner in 1978. In pursuance thereof, the directions about considering the petitioner's application for grant of dealership by the Corporation uninhibited by new policy, meaning thereby, it is to be considered on the criterion founded on the existing policy under which letter of offer was issued and also that there was no reason for the Corporation not to extend the period of earlier arrangement because of the requirement of law, namely, the NOC to be obtained by the petitioner, stood unimpaired. The only consequence of the order made by the Division Bench was that the directions of the learned Single Judge which was required to be complied with by 22.1.1984, period for such compliance was extended further by three months. Thereafter, as per the petitioner, he obtained no objection certificate which was issued to him by the appropriate authority in April 1991 and it was furnished to the Corporation, during the course of representations which he was allowed to make before the Corporation. Thereafter the petitioner was informed by letter dated 22.7.1991 that his claim for retail outlet dealership at the Kotharia location on National Highway No.8 does not deserve any consideration, the same being untenable and unjustified. The relevant part of the communication reads as under:

"Please note since your representation was not supported by land documents, further opportunity was given to you. In fact, though in your letter of 11.03.91 you have mentioned that you will be producing the fresh relevant documents, the same have not been received by us till date."

9. From the order it is clear that the sole reason which has prevailed with the Corporation in rejecting the application was not furnishing of land documents as a supportive material in aid of representation for grant of dealership.

10. Since the grant of land documents was in the hands of the State Government and the documents were not to be prepared by the petitioner, the petitioner approached the State Government making representations.

The State Government after entering into correspondence with the Corporation whether the Corporation is still desirous of granting the dealership in favour of the petitioner and on securing information about the rejection of his claim, ultimately, rejected the petitioner's prayer for grant of land and issue of documents. In this connection, the action taken by the State Government in pursuance of the directions issued by this Court in Special Civil Application No. 622 of 1983 have been stated in reply affidavit under para 12.

11. These facts clearly establish that again the respondent officer of the State as well as the Corporation has brought the petitioner to square one wherefrom he has commenced his journey seeking his fortune in dealership as an educated unemployed citizen of this country way back in 1976. Earlier, the Corporation has withdrawn its offer because of No Objection Certificate having not been issued in the name of the petitioner on account of he being driven from pillar to post by the State Authority without realising that while liability under the Explosives Act is of the petitioner, mere issuance of NOC in favour of the Corporation does not absolve the petitioner from obtaining a NOC under the Act, and the fact that NOC has been issued to the Corporation does not restrict the right of the petitioner to obtain NOC in his name. That was the finding recorded by this Court in Special Civil Application No. 622 of 1983. Now, the Corporation has resiled from its earlier position solely on the ground that petitioner has failed to produce land documents. In the face of a binding finding from this court that allotment of land at Kotharia made in favour of the petitioner subsists as a result of quashing of the order cancelling the grant made in favour of the petitioner, in the like circumstances earlier. No reasonable person could have come to the conclusion that petitioner does not have supportive proof about holding the proper land for commencing the retail dealership if offered to him. In the circumstances, insisting on production of a document, bringing in existence of which was not in the control of the petitioner, but duty of the respondent State Authorities in compliance of the court's directives, was also unreasonable.

12. Be that as it may, in these circumstances, petitioner approached this court by moving an application for contempt which was registered as Miscellaneous Civil Application No. 83 of 1996. So far as the application for initiating proceedings of contempt are concerned, court found that in view of Section 20 of the Contempt of

Courts Act, proceedings could not have been initiated in 1996. However, taking note of the petitioner's letter addressed to the Honourable Supreme Court of India as well as to this Court directed the letter to be treated as writ petition and this is how, the matter has come up for consideration for the third time before the court.

13. It has been urged on behalf of the respondent Corporation that Corporation having already considered the application in all its aspect has rejected the same by communication dated 22.7.1991 and the directions contained in the order by this Court in Special Civil Application No.622 of 1983 as well as Letters Patent Appeal No. 69 of 1984 stands fully complied with and Corporation is not required to do anything more. The State Government has supported its stand that since the application of petitioner for grant of dealership stood rejected, petitioner's grant for land for the purpose of establishing retailer outlet of petroleum products does not survive and therefore grant also does not survive.

14. Having considered the contentions raised before me and taking into consideration the facts and circumstances of the case in entirety as they have come on record from time to time, it is apparent that this is not a case of simple rejection of application of the petitioner on one or other ground and having not been challenged the grant of land in favour of the petitioner has automatically lapsed. One cannot lose sight of the fact that the court took into consideration in totality of the circumstances and found that it is on account of the unreasonable stand taken by the respondent State as well as the Corporation in creating a situation by which on account of one or the other ground the grant automatically lapsed, and for that reason the respondents who are either State or instrumentality of State cannot be absolved from the obligation to act reasonably and fairly in the matter of dealing with the citizens in grant of its largesses. If the very same situation has been allowed to persist by the respondents. Oblivion of the facts of the present case one cannot view the plea of delay in this case from the same angle. As noticed by me hereinabove, the only reason communicated to the petitioner which went against him for considering the revival of his letter of offer issued in 1976 was non production of land documents.

15. In the present case, the availability of the land with the petitioner for carrying out the retail outlet could not have been doubted by the Corporation on any ground whatsoever once this court had quashed the

cancellation of grant of lease made in favour of the petitioner by the Collector in 1976, a decision to which the Corporation was a party, State Government was a party and was binding on both, until it can be shown that after the decision of the court, the grant which was made in favour of the petitioner for establishing the retail outlet has been validly cancelled and does not exist in favour of the petitioner. The land documents only furnish as piece of evidence about the availability of an appropriate land to the petitioner for carrying out the activities of a retail outlet. To carry that requirement beyond that purpose and insisting on a document obtaining of which was not within the control of the petitioner but issue of which was very much in the hands of the State Government, and State Government not having acted in promptitude by issuing proper letter to the petitioner about the subsisting grant, and thereafter, when the petitioner approached the State Government it woke up from its slumber, enquired from the Corporation and coming to know about the unceremonious rejection of the petitioner's application, refused to issue relevant document in favour of the petitioner. It is to be noticed that the question at this stage was not making a fresh grant. Question was only to act in furtherance of grant already made in favour of the petitioner in 1978. Without proper cancellation of earlier order it could not have assumed that the grant automatically stood cancelled by informing the petitioner about the rejection of his application. It is also to be noticed that as per the existing criteria under which the application was made and as per which criterion the petitioner's case for grant of dealership was to be considered, petitioner already stood selected in 1976, but for submission of relevant documents. Those relevant documents were also concerning NOC in the first instance and land documents in the second instance. It is also noticed by the court in its earlier decision that the Corporation was instrumental in securing withdrawal of grant of land made in favour of the petitioner by obtaining order at its own instance. Thus, it clearly comes out that once the Corporation having decided to withdraw the letter of offer granted in 1980 wanted to bring out the same result by some misconception or other without taking objective view of the matter which is inherent requirement of considering the representation after hearing. The Corporation was to decide upon already pending case in which letter of offer was issued, proof of availability of land was produced, grant of which was cancelled but restored and was further to be supported by NOC under Explosives Act. NOC under Explosives Act was issued by District Magistrate and produced before Corporation. To

that extent condition stood fulfilled. Thus insistence of land document for further consideration at that stage and consequently rejection of application on that ground was wholly unreasonable and arbitrary.

16. In these circumstances, I allow this petition, quash the order contained in letter dated 22.7.1979 rejecting the petitioner's application on the ground for want of supportive land document as well as quash the order of the State Government rejecting the petitioner's application for grant of land on the supposed ground of rejection of the petitioner's application for grant of dealership and make fresh orders within a period of three weeks from today by taking into consideration the finding recorded in Special Civil Application No. 622 of 1983 to the extent they have not been modified by the Division Bench in Letters Patent Appeal and this order. The respondent State as well as Corporation both shall pay costs to the petitioner of this petition which I quantify Rs.10,000/- each. In case, the respondents consider it proper and are able to fix the liability on the officer concerned in creating this situation, the costs may be recovered from them.

Rule made absolute.
